

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 469 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

@

BHAGAVATBHAI KANTIBHAI DAVE POA HOLDER V K RATHOD

Versus

NARANBHAI JERAMBHAI PATEL

Appearance:

1. Special Criminal Application No. 469 of 2001
MR NITIN M AMIN for Petitioner No. 1
MR VIJAY N RAVAL for Respondent No. 1
MR SANJIV N KIKANI for Respondent No. 1
MR RJ GOSWAMI for Respondent No. 2
MR KC SHAH APP for Respondent No. 3
-

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 01/08/2002

ORAL JUDGEMENT

1. In this petition filed under Article 226/227 of

the Constitution of India petitioner who is the power of attorney holder of V.K. Rathod who claims to be the owner of muddamal article, that is, 117 oxygen cylinders which have been recovered and seized from respondent Nos.1 and 2 during the course of investigation in pursuance of the complaint registered with M. Case No.72 of 2000 (Criminal Case No.205 of 2001) at Bavla Police station, has prayed to quash and set aside the common order dated 31.3.2001 passed below applications for taking back the muddamal in Criminal Case No. 205 of 2001 by the Judicial Magistrate, First Class, Dholka which is confirmed vide order dated 18.6.2001 recorded in Criminal Revision Application No.19 of 2001 by the learned Additional Sessions Judge, Ahmedabad Rural and further prayed to direct the concerned police officer of the Bavla Police Station to hand-over the interim custody the gas cylinders to the petitioner on any suitable terms and conditions.

2. It may be noted that the present petitioner has filed complaint being M. Case No. 231 of 2000 for alleged commission of the offences under sections 406, 420 and 114 of the Indian Penal Code against one M/s. Lalbhai Oxygen Private Limited and its directors in the court of learned JMFC Dholka. The said complaint was sent for police investigation under section 156 (3) of the Code of Criminal Procedure and it was numbered as Criminal Case No.72 of 2000 with Bavla Police station. During the course of investigation, out of 500 cylinders for which the complaint came to be lodged, 117 cylinders could be seized from respondent Nos.1 and 2. Subsequently police filed the charge-sheet in the court of learned JMFC Dholka wherein the case is registered as Criminal Case No.205 of 2001 against the three persons out of which one Lalbhai Jairambhai is shown as absconding. It appears that the present petitioner as well as respondent Nos.1 and 2 submitted application under section 451 of the Code for getting back the muddamal during the pendency of the trial on any suitable terms and conditions. The said three applications were decided by the learned JMFC Dholka and vide common order dated 31.3.2001 rejected the prayer made by the present petitioner and accepted the prayer made by respondent Nos.1 and 2. Consequently 67 gas cylinders were handed over to respondent No.1 and 50 gas cylinders were handed over to respondent No.2 by way of interim custody.

3. Aggrieved thereby the present petitioner filed Criminal Revision Application before the learned Additional Sessions Judge, Ahmedabad Rural which is numbered as Criminal Revision application No.19 of 2001.

The learned Additional Sessions Judge, Ahmedabad Rural vide order dated 18.6.2001 rejected the said revision application and thereby confirmed the order dated 31.3.2001 passed by the learned Judicial Magistrate, First Class, Dholka which has given rise to the present petition at the instance of the complainant.

4. I have heard Mr. Nitin Amin, learned advocate for the petitioner, Mr. RJ Goswami, learned advocate for respondent No.2 and Mr.KC Shah, learned APP for respondent No.3. I have also perused the averments made in the memo of petition, grounds set out therein and the two impugned orders one recorded by the learned JMFC Dholka and the second one recorded by the learned Additional Sessions Judge, Ahmedabad Rural confirming the order of the learned JMFC, Dholka as well as copy of the charge-sheet and subsequent panchnama dated 13.5.2001 prepared and drawn pursuant to the order dated 10.5.2001 recorded by the learned Additional Sessions Judge, Ahmedabad Rural.

5. Having heard learned advocates appearing for the parties and on having perusal of the two orders and more particularly subsequent panchnama dated 13.5.2001 prepared pursuant to the order dated 10.5.2001 passed by the learned Additional Sessions Judge, Ahmedabad Rural, it is seen that on the muddamal gas cylinders two numbers are noted, one number is noted under the Head of LOP whereas another number is noted under the Head of Nagpur explosive Number. It is the case of the petitioner that he is the owner of the muddamal and pursuant to the contract entered into between him and M/s. Lalbhai Oxygen Private Limited, 500 cylinders were handed over to said M/s.Lalbhai Oxygen Private Limited who has committed breach of the trust as well as cheating with the complainant and therefore complaint came to be filed against M/s. Lalbhai Oxygen Private Limited for commission of the alleged offences u/s. 406, 420 and 114 of IPC. In view of this, I am of the opinion that since there are three rival claimants including the petitioner who claims to be the original owner of the said muddamal, the learned JMFC ought not have passed the order giving interim custody to respondent Nos.1 and 2 and therefore the order recorded by the learned JMFC which is confirmed by the learned Additional Sessions Judge deserves to be quashed and set aside. At the same time, till the trial is over, this muddamal also cannot be handed over to the petitioners. The custody of the said muddamal can be decided only at the conclusion of the trial which is still awaited. It is brought to the notice of this Court that a charge-sheet has already been filed against there

persons but out of the persons, one Lalbhai Jairambhai is absconding. Therefore, instead of deciding the interim custody of the muddamal at this stage, final custody of the muddamal deserves to be decided which can be done only at the conclusion of the trial and therefore expeditious disposal of the trial is required to be ordered which would meet the ends of justice.

6. In view of this, the learned JMFC Dholka before whom Criminal Case No.205 of 2001 is pending for trial shall give expeditious hearing of the trial and decide the same as early as possible preferably on or before 31.12.2002 by separating the trial of absconding accused. It is further directed that at the conclusion of the trial the learned Magistrate shall decide the final custody of the muddamal as envisaged under section 452 of the Code at the earliest within a period of four weeks after conclusion of the trial after giving ample opportunity to all the rival claimants after considering all the documents supporting ownership of the muddamal as well as panchnama dated 13.5.2001 prepared pursuant to the order dated 10.5.2001 recorded by the learned Additional Sessions Judge, Ahmedabad Rural, in accordance with law.

7. In view of the aforesaid state of affairs, both the orders which are impugned in this petition deserve to be quashed and set aside by allowing this petition in part as Mr. Nitin Amin, learned advocate for the petitioner has not pressed the prayer for getting interim custody of the muddamal at this stage in view of the aforesaid directions.

8. For the foregoing reasons, the petition succeeds in part and accordingly it is partly allowed. Rule is made absolute to the aforesaid extent. It is made clear that no observations made by this court shall be construed as an expression of opinion with respect of the ownership of the muddamal which shall be now decided by the learned Magistrate at the conclusion of the trial as envisaged under Section 452 of the Code after giving ample opportunity to all the concerned rival claimants considering the subsequent panchnama as well. Till the application under Section 452 of the Code for custody of the muddamal is decided, the custody of muddamal shall remain with the concerned police station. Direct service is permitted.

9. Record and proceedings be sent back forthwith to the Court of the learned Judicial Magistrate, First Class, Dholka, for expeditious disposal of the trial.

(A.M. Kapadia, J.)

(karan)